IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

ST.Rev..No. 303 of 2007

TA.185/2004 of S.T.A.TRIBUNAL, ADDL.BENCH,KOZHIKODE..
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REVISION PETITIONER/APPELLANT/ASSESSEE:

CHEMNAD TRADERS,
VATAKARA,
KOZHIKODE DISTRICT,
REPRESENTED BY ITS
MANAGING PARTNER,
SRI.F.H. NAZEER AHAMMED.

BY ADV. SRI.E.P.GOVINDAN

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA,
REPRESENTED BY SECRETARY,
TAXES DEPARTMENT,
GOVT. SECRETARIAT,
TRIVANDRUM.

BY SPECIAL GOVT. PLEADER SRI. VINOD CHANDRAN.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, CJ. & K.M. JOSEPH, J.

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S.T.(Rev) No.303 of 2007

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Dated this the 14th day of November, 2007.

ORDER

H.L.DATTU, CJ,

The petitioner before us is a dealer registered under the provisions of the Kerala General Sales Tax Act (for short 'the Act'). He is an assessee on the files of the Additional Sales Tax Officer No.I, Vatakara.

2. The assessee is doing business in sale and purchase of copra.

3. The original assessment has been completed by the assessing authority for the assessment year 1997-98 and in that it rejected the claim of the assessee towards the purchase returns. Aggrieved by the said order passed by the assessing authority the assessee had filed appeal before the First Appellate Authority in STA. 76 of 2002. The said authority by its order dated 27.3.2002 was pleased to allow the appeal in part and thereafter pleased to remand the matter to the assessing authority to re-do the matter keeping in view certain observations made by him in the course of the order.

4. After such remand the assessing authority has passed yet another order on 8.8.2002 rejecting the claim of the assessee for exclusion of the purchase returns from the total and taxable turnover of the dealer. Aggrieved by that, the assessee has unsuccessfully filed the first appeal and also the second appeal before the Tribunal. The Tribunal while rejecting the assessee's appeal has observed as under:

> "We have considered the contentions of both sides. It is seen that most of the purchases of copra are directly from farmers by the appellant. More over the goods are not transported under the cover of

> documents prescribed under the Act. Further it is found that the appellant has failed to produce any document which prove the acceptance of the alleged goods by the sellers. As this be the position, we are of the view that the order of the assessing authority as well as the finding of the authority below is according to law."

Aggrieved by the said findings of the Tribunal, the assessee is before us in this Tax Revision Case.

5. The assessee has raised the following questions of law for our consideration. They are as under:

> "(i) Whether on the facts and in the circumstances of the case the Tribunal justified in dismissing the appeal filed by the petitioners.
>
> (ii) Whether on the facts and in the circumstances of the case the Tribunal was justified in not relying on Ann.Eletter dt. 9.11.1997 which bears the seal of the Sales Tax Check Post.
>
> (iii) Whether on the facts and in the circumstances of the case the Tribunal was justified in disallowing the claim of purchase return.
>
> (iv) Whether on the facts and in the circumstances of the case the Tribunal was justified in sustaining the addition made by the authorities below without any materials."

6. Sri.E.P.Govindan, learned counsel appearing for the petitioner/assessee would submit that the assessee is an illiterate person and therefore while returning the goods to his seller he did not choose to send the goods by issuing appropriate delivery note as prescribed under the Act. Therefore the assessing authority was not justified in disallowing the claim of the assessee towards exclusion of the purchase returns made by the assessee to his seller.

7. We are not impressed by the argument advanced by Sri.E.P.Govindan, learned counsel for the assessee.

8. The assessee had purchased copra from different dealers. If for any reason he wanted to return the copra so purchased, he should have done it with the help of the document as prescribed under the Act. In the instant case, it is the case of the assessee that he has returned a part of the goods to the seller, but had not produced the delivery note before the assessing authority. In the absence of appropriate documentary evidence for having returned the goods to the seller, from whom he had purchased, the claim of the assessee for exclusion of the purchase return of the copra cannot be granted by the assessing authority. Keeping all these aspects in view, the assessing authority has completed the assessment and quantified the tax liability. The conclusion reached by the assessing authority is accepted by the First Appellate Authority and by the Tribunal.

9. Having gone through the orders of assessment passed by the assessing authority and the orders passed by the Tribunal, we are of the opinion that none of the authorities have committed any error, which would call for our interference in this Tax Revision Case. Therefore the Revision Petition requires to be rejected. Accordingly it is rejected. The questions of law framed by the assessee are answered against the assessee and in favour of the revenue.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

sb/dk